In the High Court of Judicature at Madras

Dated:09.03.2007

Coram

The Honourable Mr.Justice A.C.ARUMUGAPERUMAL ADITYAN

Second Appeal No.670 OF 1997

1. M.Subramaniam
2. P.Kaliappan
3. V.Maruthachalam
4. M.Ramadass
5. R.Venkatachalam ..Appellants/Plaintiffs

v

1. The Executive Officer,
   Chinnavedampatti Town
   Panchayat, chinnavedampatti
   Coimbatore North Taluk,
   Coimbatore

2. The District Collector,
   Coimbatore District
   Coimbatore ..Respondents/Defendants

This second appeal is filed under Section 100 of CPC against t judgment and decree dated 20.12.1996 made in A.S.No.182 of 1994 on t file of the Court of First Additional District Judge-cum-Chief Judici Magistrate, Coimbatore confirming the decree and Judgment in O.S.No.22 of 1990 dated 13.01.1994 on the file of the Court of I Addition District Munsif, Coimbatore.

For Appellants : Mr.Palani Selvaraj
For Respondents : Mr.S.Mohammed Yousuf-R1
Mrs. R.Shanthi Rakkappan
Government Advocate(CS)-R2

JUDGMENT

This appeal has been preferred against the Judgment and decree A.S.No.182 of 1994 on the file of the Court of I Additional Distri Judge, Coimbatore. The unsuccessful plaintiffs before the Courts bel are the appellants herein.

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2. The short facts in the plaint for the purpose of decidin this appeal sans irrelevant particulars are as follows:

The plaintiffs are the permanent residents Chinnavedampatti. They belonged to Adi Dravida Community and t plaintiffs are the leaders and well-wishers of the said Adi Dravi Community. The suit has been filed in the representative capacity the said community. The plaintiffs are having the temple called "Ra Koil" which belonged to Adi Dravida Community exclusively. The sa temple is being maintained and worshipped by Adi Dravida Community fr time immemorial. Even as early as 6.7.1961 itself, the electric connection in S.C.No.III of Chinnavedampatti was given to the su temple. The plaintiffs are in possession and enjoyment of the su property and they are managing the Ramar Temple situate in the su property. Adjacent to this temple, there vacant site about 12 cents. The said 12 cents is in possession a enjoyment of the plaintiffs. All the relationship rituals were be performed in the temple. The plaintiffs are using the said vacant si of 12 cents in performing the temple functions. The plaintiffs ha also constructed two rooms in a portion at the corner of the sa vacant site. Those two rooms are assigned by the first defendant door Nos.72-C and D. The plaintiffs have proposed to construct Kalyana Mandapam in the remaining vacant space, for better a convenient use of the people of the said community. The plaintiffs ha also put up iron barbed fencing around the vacant site including t said two rooms. To show the physical features of the property, t plaintiffs have produced a rough sketch wherein door Nos.72-C and D the vacant site have been marked as "STUV". Now the Government ha taken steps to classify the suit vacant site as a Poramboke land. T first defendant without knowing the history of the suit property and t nearby Ramar temple is attempting to initiate proceedings to classi the land as "Poramboke". The defendants 1 and 2 have no right interest over the plaint schedule property. On 11.8.1982, the thi party people began to disturb the plaintiffs' possession and attempt to trespass into the suit property. The first plaintiff took crimin actions against such illegal acts of the said third party. A poli complaint was also lodged by the first plaintiff on 11.8.1982. Her the suit for injunction.

3. The second defenant has adopted the written statement filed the first defendant which runs as follows:

The suit is not maintainable for want of notice under Section 80 CP The averments in the plaint that the plaintiffs are permanent reside of Chinnavedampatti Village and that a temple called Ramar Koil belong to Adi Dravida Community and that the plaintififfs are maintaining t temple and that the adjacent vacant space of 12 cents also belonged the Adi Dravida Community and that they are using the same during t

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festival time and that the suit property has been fenced with ir barbed wire are all false to the knowledge of this defendant. T plaintiffs have no right or title in respect of 12 cents of vacant la lying adjacent to the said Ramar Koil. The plaintiffs have made attempt to trespass into the said vacant land of 12 cents, and the sa attempt of the plaintiffs was thwarted by the timely intervention the Government. After having failed in all their attempts, t plaintiffs with an ulterior motive have chosen to file false suit wi frivolous allegations. Chinnavedampatti Town Panchayat office has be constructed in G.S.No.365 in Athipalayam Road, wherein 50 cents vacant space in and around the said building is in existence. The sa vacant site belongs to the Government. The plaintiffs and their men a making hectic attempt to encroach 50 cents of land. Already appropria action has been taken by the Government to prevent the plaintiffs a others to encroach the properties. Only to circumvent the law and wi an aim to encroach upon this property, the plaintiffs have chosen file this kind of frivolous suit,that too, against the real owners the property. The plaintiffs are not using the vacant site for t purpose of temple festival from time immemorial as alleged in t plaint. The plaintiffs have no cause of action to file this sui Hence the suit is liable to be dismissed in limine with costs.

4. On the above pleadings, the learned trial Judge has framed t issues for trial. Before the trial Court, on behalf of the plaintiff plaintiffs 1 and 2 were examined themselves as P.Ws 1 and respectively and have marked Exs A1 to A12. No oral and documenta evidence let in on behalf of the defendants.

5. After going through, the oral and documentary evidence let before the Trial Court, the learned trial Judge has come to a conclusi that the plaintiffs are not entitled to any relief asked much less order of permanent injunction as prayed for in the suit against t Government and consequently, dismissed the suit. Aggrieved by t findings of the learned trial Judge, the plaintiffs have preferred appeal in A.S.No. 182 of 1994 before the I Additional District Judg cum- Chief Judicial Magistrate, Coimbatore. The first appellate Juc after scanning the evidence meticulously and after considering t rival submissions of the parties concerned, has ultimately took concurrent view with the findings of the learned trial Judge h dismissed the appeal thereby confirming the decree and Judgment of t learned trial Judge. Hence the plaintiffs are before this Court by w of Second appeal.

6. The substantial questions of law involved in this appeal are

> " Whether the Courts are right in law in dismissing the suit by disagreeing the appellants main plea on the law of adverse possession by adducing as many as 12 Exhibits to show that they are and thepeople of

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Adi Dravida Community in Chinnavedampatti Village suit property for over several years?

2. Whether the Courts below are right in law in holding that the appellants have filed the suit on their individual capacity only when they obtained a specific order through court in I.A.No.1425 of 1990 to file the suit for an on behalf of the Adi Dravida community people in chinnavedampatti Village?"

7. Heard Mr.Palani Selvaraj, learned counsel appearing for t appellants and Mr. S.Mohammed Yousuf, learned counsel appearing i the first respondent and Mrs. R.Shanthi Rakkappan, Learned Governme Advocate(CS) for the second respondent and considered their respecti submissions.

8.The Points:

The learned counsel for the appellants would contend that both the tri Court as well as the first appellate Court have erroneously held th the suit is not maintainable for want of notice under Section 80 of C whereas along with the plaint, he has filed I.A.No.1425 of 1990 a after getting permission from the Court, the plaint was numbered. Unc Section 80(2) of CPC only to get an order for an urgent or immedia relief against the Government or against any public officer, a suit c be instituted with the leave of the Court without serving any notice required under Section 80(1) of CPC. But no interim relief can granted without notice to the Government or public officer as the ca may be . So taking shelter under Section 80 (2) of CPC, the learn counsel appearing for the appellants would contend that already Cou has permitted him to file the suit without notice under Section 80 CP I am afraid that such an interpretation cannot be given to Section 80 CPC. Under Section 80 of CPC, two months notice is necessary, for fili a suit against the Government or public officer. If the plaintif seek any urgent order from the Court then he can file the suit with application for permission to file the same and even in that event, will not be entitled to get any interim order without notice. Unc such circumstances, I do not find any illegality or infirmity in t findings of the Courts below that the suit is bad for notice unc Section 80 of C PC.

9. The next point for consideration in this appeal is that wheth the plaintiffs have prescribed adverse possession to the suit propert Before the trial Court, the plaintiffs have produced electrici consumption receipts for the alleged two rooms bearing door Nos.72 C a D . Ex A1 is dated 18.7.1980. Ex A2 is dated 18.8.1976. These t receipts are the earliest receipts . But the suit was filed in the ye 1990. To prescribe title by way of adverse possession against t Government, the plaintiffs must show that they are in continuous a uninterrupted possession of the suit property for more than thir

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years. Both the Courts below have concurrently held that not even surv number to the plaint schedule property was given by the plaintiffs. the plaintiffs claim that they have prescribed adverse possession th indirectly they admit that they are not the owners of the suit proper and the defendants are the owners of the suit property. Under su circumstances, the plaintiffs must show some revenue records substantiate their claim that they are in lawful possession a enjoyment of the suit property which is admittedly belonged to t Government.

10. The learned counsel appearing for the appellants at the end of his argument has produced G.O.NO.854 dated 30.12.2006 to sh that if a person is in occupation in the Poramboke land for continuc period of 20 years, the Government can consider the possession a grant patta for the purpose of constructing a house. Basing on the abo said G.O.(Ms)NO.854 Revenue(Nee.Mu) dated 30.12.2006, the learn counsel appearing for the appellants would contend that the plaintii are eligible to get patta for the plaint schedule property. If it is s nothing prevented the plaintiffs to approach the Government for issuar of the patta in their favour. Whether the plaintiffs are entitled to g patta for the suit property, or not is the prerogative right of t Government in which at this stage , this Court cannot interfere wit The remedy open to the plaintiffs is to approach the Government on t basis of G.O.Ms.No.854 Revenue(Nee.Mu) Department dated 30.12.2006 a the Government is the authority to decide the matter. Under su circumstances, I do not find any reason to interfere with the we considered Judgment in A.S.No.182 of 1994 on the file of the fir Additional District Judge-cum-Chief Judicial Magistrate, Coimbator which is neither illegal nor infirm to warrant any interference fr this Court. Points are answered accordingly.

11. In fine, the appeal is dismisised confirming the decree a judgment in A.S.No.182 of 1994 on the file of the Court of Additional District Judge-cum- Chief Judicial Magistrate, Coimbatore. the circumstances of the case, there is no order as to costs.

Sd/
Asst. Registrar

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Sub Asst.Registrar

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To

1. The I Additional District Judge-cum-Chief Judicial Magistrate,
   Coimbatore (with Records)
2. The I Additional District Munsif, Coimbatore
3. The Section Officer, V.R. Section, High Court, Chennai.

+ One cc to to Mr. S. Mohamed Yousuf Advocate sR 15334
+ One cc to Mr. Palani Selvaraj Advocate SR 14504

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